

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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NICOS HALMAR SPANN,

Case No. 2:23-cv-00093-GMN-EJY

Plaintiff,

V.

COX COMMUNICATIONS,

Defendant.

ORDER

Pending before the Court is Plaintiff's Request for a Short Extension of Time and Request for Leave to Re-Serve Proposed Amended Complaint. ECF No. 22. On the same date Plaintiff filed a Response to the Court's Order to Show Cause. ECF No. 23. Plaintiff shows good cause why this case should not be dismissed for lack of service. Further, Plaintiff explains that he has now familiarized himself with Federal Rule of Civil Procedure 4 regarding service of process.

15 Federal Rule of Civil Procedure 4(m) provides two avenues for relief. “The first is
16 mandatory: the district court must extend time for service upon a showing of good cause. The second
17 is discretionary: if good cause is not established, the district court may extend time for service upon
18 a showing of excusable neglect.” *Crowley v. Bannister*, 734 F.3d 967, 976 (9th Cir. 2013) (citing
19 *Lemoge v. United States*, 587 F.3d 1188, 1198 (9th Cir. 2009)). Here, Plaintiff, who is pro se, admits
20 he did not understand the rules pertaining to service because of his lack of legal knowledge and
21 inadvertence. ECF No. 22 at 1. Even if this is not sufficient for good cause, the Court exercises its
22 discretion and grants Plaintiff’s short extension request.

23 However, Plaintiff's First Amended Complaint was not filed in accordance with the Federal
24 Rules of Civil Procedure. Plaintiff's First Amended Complaint was filed on October 30, 2023, which
25 is far more than twenty one days after Plaintiff filed his initial Complaint on January 18, 2023.
26 *Compare* ECF Nos. 1 and 21. Leave of Court was not sought or granted as is required. Fed. R. Civ.
27 P. 15(a)(1)(A) ("A party may amend its pleading once as a matter of course within ... 21 days after
28 serving it"); 15(a)(2) ("In all other cases, a party may amend its pleading only with the opposing

1 party's written consent or the court's leave."). Proper service of the amended complaint is likely to
2 yield a motion to dismiss in response.

3 Accordingly, IT IS HEREBY ORDERED that Plaintiff has satisfied his obligation to show
4 cause why this matter should not be dismissed for lack of timely service.

5 IT IS FURTHER ORDERED that Plaintiff's Request for a Short Extension of Time (ECF
6 No. 22) is GRANTED in part and DENIED in part.

7 IT IS FURTHER ORDERED that Plaintiff is given through and including **December 4, 2023**
8 to serve Defendant.

9 IT IS FURTHER ORDERED that Plaintiff's Request for Leave to Re-Serve Proposed
10 Amended Complaint is DENIED. Plaintiff must serve his Original Complaint (ECF No. 1) after
11 which he may, if he so chooses, seek leave to file an amended complaint.

12 Dated this 1st of November, 2023.

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14 Elayna J. Youchah
15 UNITED STATES MAGISTRATE JUDGE

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